costs by minutes (both access and reciprocal compensation) that utilize a company's interoffice facilities.[157] The rates for price cap carriers would be determined by calculating reinitiated price cap rates on an unseparated basis to be applied to all network minutes.[158] If the existing price cap rates are higher than the reinitiated rates, the rates would be reset to the reinitiated rates; if the existing rates are lower, the price cap rates would remain in place.[159] The FACTS plan also includes a proposal for extending this compensation regime to IP-enabled services.[160]

49. In addition to more uniform rates, the FACTS plan calls for local retail rate rebalancing to benchmark levels established by state commissions.[161] These benchmarks would be set within a nationwide rate range recommended by the Joint Board on Universal Service and approved by the Commission.[162] In adopting these benchmark levels, state commissions may consider local calling scope and affordability between rural and non-rural exchanges.[163] In addition to rate rebalancing, the FACTS plan would retain the federal SLC cap and unify SLCs among all companies on a state-specific basis.[164] For rural carriers, these SLCs would be set at the weighted-average residential and business SLCs for price cap carriers in that state.[165] The SLCs for price cap carriers will depend on whether there is an excess of revenues from the reinitiated access rates or current price cap rates.[166]

50. The FACTS plan also includes a joint process by which the Commission and the states review the procedures and data to determine the appropriate unified rates.[167] The resulting per-minute rates would be charged to the retail service provider, *i.e.*, the originating LEC on a local call or the IXC on both ends of an interexchange call.[168] Any costs still not recovered through application of these per-minute compensation rates, rebalanced local service rates, and unified SLCs would be recovered through

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[157] *Id.* at 39-41. The rates developed under the FACTS plan would be developed separately for both switching and transport. *Id.* at 42.

[158] *Id.*

[159] *Id.* at 42-43. Under the FACTS plan, unified compensation rates for competitive LECs are capped at the level of the competing incumbent LEC in the same market, unless an exemption applies. *Id.* at 44-45.

[160] *Id.* at 46-54, 89-107.

[161] *Id.* at 61-62.

[162] *Id.* at 61, 63-65.

[163] *Id.*

[164] *Id.* at 68-69.

[165] *Id.*

[166] *Id.* at 70.

[167] *Id.* at 37-39. Specifically, the FACTS plan would be implemented through the section 410(c) Joint Board mechanism. *Id.* at 56-57.

[168] *Id.* at 33-35. The retail provider also would be responsible for any transiting costs. *Id.* at 35. Additionally, under the FACTS plan, the tandem owner is responsible for the payment of compensation to the terminating carrier for all unidentified traffic. *Id.* at 55.

a state equalization fund (SEF).[169] SEFs would be under the control of state commissions but would be funded from both federal and state sources.[170] SEF distributions would be available to all ETCs.[171]

51. *Cost-Based Intercarrier Compensation Coalition (CBICC)*. The CBICC is a coalition of competitive LECs. The CBICC proposal calls for the Commission to require that carriers adopt a single termination rate in each geographic area that would apply to all types of traffic.[172] The rate would be based on the incumbent LEC's cost of providing tandem switching, transport, and end office switching, calculated using the Commission's TELRIC methodology.[173] Under the CBICC plan, interstate access rates immediately would be reduced to this TELRIC level, while the question of how to transition intrastate rates would be referred to a Joint Board.[174] Any loss of revenue associated with these reductions would be offset by increases in end-user charges and, in the case of rural LECs, increased universal service support.[175] CBICC proposes no change in network interconnection rules, and under this plan the carrier with the retail relationship with the originating caller pays all other carriers whose networks are used to complete a call.[176] The CBICC proposal also covers VoIP traffic to the extent that it originates or terminates as circuit-switched traffic.[177]

52. *Home Telephone Company and PBT Telecom (Home/PBT)*. Home Telephone Company and PBT Telecom are rural LECs that developed an alternative proposal to those advanced by the larger groups discussed above.[178] Under this proposal, all carriers offering service to customers that make telecommunications calls would be required to connect to the PSTN and obtain numbers for assignment

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[169] *Id.* at 73-75. Stated differently, under the FACTS plan, per-minute compensation rates would be designed to recover only those costs not recovered through local service rates, special access, SLCs, and existing federal and state universal service support mechanisms. Consequently, where these other revenue streams are sufficient to recover all of a carrier's costs, that carrier might not be able to impose any per-minute rate at all. Any costs still not recovered after application of the per-minute compensation rate would be recovered through a state equalization fund (SEF). *See id.* at 74.

[170] *Id.* at 76-80. The minimum federal contribution would be 25 percent and the maximum would be 75 percent. *Id.* at 77-79.

[171] *Id.* at 85. The FACTS plan also retains existing federal universal service support, although it would move some traffic-sensitive costs to the new per-minute compensation rates and lift the existing cap on High Cost Loop support. *Id.* at 71-72.

[172] CBICC Proposal at 1.

[173] *Id.* Because the CBICC advocates use of the TELRIC cost methodology, it supports an average, rather than incremental, cost approach.

[174] *Id.* at 2.

[175] *Id.*

[176] *Id.* at 2-3. Thus, under this proposal, IXCs would continue to pay LECs for the origination of interexchange traffic. *Id.* at 2. Further, transit service providers would charge TELRIC-based rates for the functions actually provided, such as tandem switching and/or interoffice transport. *Id.*

[177] *Id.* at 3.

[178] Home/PBT Proposal at 1.

to customers.[179] The plan would replace existing per minute access charges and reciprocal compensation with connection-based intercarrier charges. Specifically, every carrier would develop and tariff a charge to be assessed on all interconnected carriers based on a DS-0 level of connection.[180] If the carrier has an access tandem, it would develop an alternative access tandem connection (ATC) fee that would include the additional costs of the tandem service, including the connections to subtending switches and transport to those offices.[181] Under this proposal, network interconnection between carriers would be accomplished through one POI per LATA, except in the case of rural carriers.[182]

53. To help offset revenues lost from elimination of the current intercarrier compensation charges, the proposal permits carriers to increase SLCs up the current federal cap.[183] Any remaining revenue shortfall may be recovered from a new bulk-billed intercarrier cost recovery fund, called the high cost connection fund (HCCF).[184] Some of the existing universal service mechanisms would be added into the HCCF and one existing mechanism would be eliminated from universal service.[185] The HCCF funding mechanism would be administered by NECA and carriers seeking HCCF funding would need to submit cost support to use in developing the HCCF charge.[186] The HCCF would be funded through a monthly assessment based on activated telephone numbers and such assessment may be passed through to subscribers.[187] Home and PBT explain that, under this plan, the "access charges" are placed on the number which allows connectivity to the network.[188]

54. *Western Wireless Proposal.* Western Wireless is a wireless carrier that has been designated as an eligible telecommunications carrier (ETC) in 14 states and the Pine Ridge Indian reservation. On December 1, 2004, Western Wireless submitted a reform plan based on a unified bill-

[179] *Id.* at 12-13.

[180] *Id.* at 13. The connection charge is intended to cover the switching and transport costs for use of the local calling network and may not exceed the national average retail fee for a standard business line. *Id.*

[181] *Id.* at 14. The ATC fee is assessed on trunks the tandem owner requires for intra-company traffic and is specific to each tandem. *Id.*

[182] *Id.* In the case of rural carriers, the POI must be located within the local exchange area established by the state commission. *Id.*

[183] *Id.*

[184] *Id.* at 14-15. Home and PBT state that the HCCF represents "the above average network cost required to be recovered from all connected to the network." *Id.* at 15.

[185] Id. at 15. Specifically, the Local Switching Support mechanism and the ICLS would be added to the HCCF, and the Interstate Access Support for non-rural carriers would be taken out of the existing universal service fund. *Id.* The plan would retain the remaining universal service mechanisms. *Id.* at 17. The states may elect to add intrastate universal service or other funding mechanisms to the HCCF. *Id.* at 16.

[186] *Id.* at 17.

[187] *Id.* at 16.

[188] *Id.* at iii.

and-keep system for all forms of traffic.[189] This plan would reduce per-minute compensation rates to bill-and-keep in equal steps using targeted reductions over a four-year period, with a longer transition period for small rural incumbent LECs.[190] Over the four-year transition period, incumbent LECs would be permitted to increase SLCs as proposed in the ICF plan, except that there would be no difference between the SLC caps for rural and non-rural incumbent LECs.[191] At the end of the four-year transition, the SLC would be deregulated for an incumbent LEC that can demonstrate that it is subject to competition.[192] The Western Wireless proposal also includes default network architecture rules based on carrier "edges" or mutual meet-point arrangements.[193] The plan relies on carrier-to-carrier negotiation of interconnection agreements pursuant to section 251(b)(5) of the Act.[194]

55. The Western Wireless proposal also would replace all existing universal service mechanisms with a unified high-cost mechanism based on forward-looking costs.[195] This new support would be fully portable to all designated ETCs and additional portable funds could be dispersed in states with forward-looking costs higher than the national average.[196] The plan also would include a transition period for rural incumbent LECs and ETCs during which existing USF funds would be phased out, and new funds phased in, over four years.[197] This transition would be extended to six years for the smallest rural incumbent LECs and other ETCs, and would include additional support for a limited period if a

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[189] *See* Western Wireless Proposal at 6. *See also* Letter from David L. Sieradzki, Counsel for Western Wireless Corp., to Marlene H. Dortch, Secretary Federal Communications Commission, CC Docket No. 01-92, Attach. (filed Nov. 18, 2004) (attaching an outline of the Western Wireless Proposal). We note that the Western Wireless Proposal incorporates many of the reforms it proposed in October 2003 in a Petition for Rulemaking in which it urged the Commission to eliminate rate-of-return regulation of rural incumbent LECs for purposes of determining their federal high-cost universal service support and interstate access charges. *See generally Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers*, RM-10822, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Western Wireless Petition for Rulemaking to Eliminate Rate-of-Return Regulation of Incumbent Local Exchange Carriers (filed Oct. 30, 2003). Due to the similarity of issues and reform proposals raised in the petition and in this *Further Notice*, we assume that the more recent reform plan represents the most comprehensive version of the reforms advocated by Western Wireless.

[190] Western Wireless Proposal at 13.

[191] *Id.* at 14. Under the Western Wireless plan, carriers must identify the SLC as part of the basic price of service rather than as a regulated "add-on" charge. *Id.*

[192] *Id.* Western Wireless also includes a description of the criteria used to determine whether an incumbent LEC is subject to competition. *Id.*

[193] *Id.* at 12. For interconnection between hierarchal incumbent LECs and other carriers, the proposal permits interconnection at the carrier "edge" or under a shared transport arrangement at the option of the competitive carrier. *Id.* The proposal also requires incumbent LECs to offer transit service at capped rates. *Id.*

[194] *Id.* at 10, 20.

[195] *Id.* at 15.

[196] *Id.* Western Wireless states that, at the end of the four-year transition, the fund would be "right-sized," with "sufficient" support, but provides no further detail on fund size and support amounts. *Id.*

[197] *Id.* at 16

carrier can demonstrate "extreme hardship."[198]

56. *National Association of State Utility Consumer Advocates (NASUCA) Principles.* NASUCA advocates a minimalist approach that addresses the disparity among some existing intercarrier compensation rates and reduces certain rate levels over a five-year period.[199] Under the NASUCA plan, the Commission would establish a target rate in each year of a five-year transition down to a rate of $0.0055 per minute.[200] Intercarrier compensation rates already under the target rate (*e.g.*, reciprocal compensation rates) would remain at current levels.[201] State commissions would be encouraged to match the target rate for intrastate rates, but they would retain authority concerning how to reach that rate.[202] The NASUCA plan also would retain the existing network interconnection rules and existing wholesale and retail relationships.[203] Further, it would retain the current USF mechanisms[204] and the current SLC rate caps.[205] In addition to its proposal, NASUCA urges the Commission to reject efforts to guarantee current revenue streams, such as access revenues.[206] It argues that revenue assumptions in the absence of demonstrated financial need would create artificial incentives for customers to migrate to services that generate fewer access revenues.[207] NASUCA concludes by proposing ways to address access revenue reduction issues.[208]

57. *NARUC Principles.* In an effort to create a vehicle for evaluating the various reform proposals developed by the industry, a group of NARUC commissioners and staff developed a set of principles addressing the design and functioning of any new intercarrier compensation plan, as well as prerequisites for implementation of any plan.[209] NARUC favors the application of a unified regime to all

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[198] *Id.*

[199] *See* NASUCA Proposal at 1. NASUCA believes that elimination of the rate disparities combined with revenue reductions will encourage carriers to enter into negotiated bill-and-keep arrangements. *Id.* at 1-2. NASUCA states, however, that a mandatory elimination of intercarrier payments is ill-advised and unnecessary. *Id.* at 2.

[200] *Id.* The plan would permit a higher target rate ($0.0095 per minute) for rural carriers. *Id.* The NASUCA plan contemplates interim reform but not a final comprehensive solution. *Id.* at 1, 3.

[201] *Id.*

[202] *Id.* Thus, under the NASUCA plan, the Commission would continue to have jurisdiction over interstate access rates and the state commissions would continue to have jurisdiction over intrastate access rates and local service rates. *Id.*

[203] *Id.*

[204] *Id.* NASUCA states that the existing local switching support (LSS) fund could be amended to allow recovery of a portion of the revenue shortfall if necessary. *Id.*

[205] *Id.* Additional funding could be recovered, however, through local rates or universal service as determined by the states. *Id.*

[206] *Id.* at 2.

[207] *Id.* at 2.

[208] *Id.* at 3.

[209] NARUC Principles at 1.

companies that exchange traffic over the Public Switched Telephone Network.[210] NARUC would permit a carrier to impose charges to recover the cost of services requested by another carrier (*e.g.*, terminating access service) provided that those charges do not discriminate based on the classification of the requesting carrier or its customers, the location of those customers, or the network architecture of the requesting carrier's network.[211] NARUC also favors charges that are competitively and technologically neutral and reflect underlying economic costs.[212]

58. NARUC supports market-based intercarrier compensation rates in competitive markets, and supports price-regulated rates based on a "reasonable return" in non-competitive markets.[213] In addition, NARUC advocates a continuing and significant role by the states in establishing rates and protecting consumers, including the ability to exercise substantial discretion in developing retail rates for providers of last resort.[214] NARUC favors an approach that ensures continuity of services, reasonable and affordable retail rates (especially for rural consumers), and minimizes the impact on universal service support programs.[215] Finally, the principles include a number of issues the Commission should consider before implementing any new plan, such as the estimated cost impact on a carrier-by-carrier basis, the impact on universal service support mechanisms, and any effects on consumer rates.[216]

59. *CTIA – The Wireless Association (CTIA) Principles.* On November 29, 2004, CTIA submitted a statement of principles for the Commission to consider as part of its review of any proposals to reform intercarrier compensation.[217] In its statement, CTIA expresses concern that the comprehensive reform proposals submitted in the record do not reflect an appropriate balancing of consumer and carrier interests and do not adequately reflect the views and concerns of wireless carriers and customers.[218] CTIA supports a bill-and-keep approach to intercarrier compensation reform under which carriers would "have the flexibility to design their rate structures to recover a larger portion of costs from end-user

[210] *Id.*

[211] *Id.* at 2.

[212] *Id.* Moreover, NARUC believes that any intercarrier compensation system should be simple and inexpensive to administer. *Id.*

[213] *Id.* at 2-3. Although NARUC supports a "rigorous definition of 'competitive markets,'" it does not provide a suggested definition.

[214] *Id.* at 3.

[215] *Id.* at 3-4.

[216] *Id.* at 4.

[217] *See* CTIA Nov. 29 *Ex Parte* Letter at 1. Prior to the filing of the principles submitted by CTIA, a group of independent wireless carriers (IWCs) submitted a statement of principles for consideration in this proceeding. *See* Letter from Thomas J. Sugrue, Vice President, Government Affairs, T-Mobile USA, Inc., Gene A. DeJordy, Vice President, Regulatory Affairs, Western Wireless Corp., and David M. Wilson, Counsel to Dobson Cellular Systems, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 1 (filed Nov. 17, 2004). We note that the general principles supported by the IWCs are substantially similar to those submitted by CTIA and that the IWCs are members of CTIA. Thus, we need not separately detail the earlier principles submitted by the IWCs.

[218] CTIA Nov. 29 *Ex Parte* Letter at 1.

customers – while ensuring that end-user rates remain affordable."[219] It explains that any rules should focus on the benefits to consumers and not guarantee revenue neutrality for incumbent carriers.[220] CTIA states that the new rules should encourage economic efficiency and promote competition through deregulation.[221] CTIA also supports rules that are technologically neutral through uniform application to all categories of services and carriers.[222] In terms of universal service reform, CTIA supports the creation of a single, unified universal service support mechanism that calculates support based on the forward-looking economic costs of serving customers.[223] Finally, CTIA observes that many of the reform proposals would increase the administrative complexity of the intercarrier compensation rules and universal service systems. Accordingly, CTIA urges the Commission to adopt rules that are simple to administer in order to avoid increased compliance costs than may result in additional charges to consumers.[224]

2. Discussion

60. We commend all the industry parties that have been involved in the process of developing these proposals for their substantial efforts to reach agreement on these complicated issues. It is apparent from these efforts that there is widespread agreement with our assessment that today's intercarrier compensation mechanisms no longer are sustainable. Although there are numerous paths the Commission may take as we begin to reform the current regime, we are encouraged by this acknowledgement of the need for fundamental change.

61. We also commend the work done by NARUC in developing a set of principles that can be used in evaluating these proposals. Many of the principles identified by NARUC are consistent with the policy goals we have identified above. For example, we share NARUC's view that any new plan should be simple to administer, competitively and technologically neutral, and should minimize arbitrage opportunities. We also share NARUC's desire to adopt an approach that ensures reasonable and affordable rates, especially for rural consumers, and that minimizes the impact on universal service support programs.

62. Given the extensive negotiations that formed the basis for some of these proposals, we ask parties to comment on whether it is preferable for the Commission to adopt a single proposal in its entirety, rather than adopting a modified version of any particular proposal or attempting to combine different components from individual plans.[225] If we were to adopt one proposal or combine different

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[219] *Id.* at 2.

[220] *Id.* at 1-2. Specifically, CTIA appears concerned that, because some of the proposals make universal service funding unavailable to competitors, these proposals would deny the benefits of competition to rural consumers. *Id.* at 2.

[221] *Id.* at 2.

[222] *Id.*

[223] *Id.* at 3.

[224] *Id.*

[225] We note that the ICF participants view their plan as a unified proposal that the Commission should adopt "without modification." ICF Proposal at 2. They also would oppose any attempt to adopt individual parts of the plan while "modifying, rejecting, or deferring others." *Id.*

components of the plans, we seek comment on implementation and transition issues for such an approach.

D. Legal Issues

63. As the Commission considers the record developed in response to the NPRM and the specific proposals recently filed in this proceeding, we are mindful of our obligation to comply with the statutory provisions governing intercarrier compensation, such as sections 251(b)(5) and 252(d)(2) of the Act.[226] In addition, we recognize that any unified regime requires reform of intrastate access charges, which are subject to state jurisdiction. We further recognize that reform of the access charge regime must take into account the Commission's rate averaging and rate integration requirements codified in section 254(g) of the Act.[227] In this section, we ask parties to consider these and other legal issues associated with comprehensive reform efforts. Specifically, we ask parties to comment on whether the various reform proposals adequately address the legal issues identified below. In addition, we discuss alternative approaches to intercarrier compensation reform that could be accomplished through changes to our interpretation of the statutory requirements, and ask parties to comment on whether such changes should be adopted, either as a transitional mechanism or as part of a more permanent solution.

1. Section 252(d)(2) "Additional Cost" Standard

64. Section 252(d)(2) sets forth an "additional cost" standard for reciprocal compensation under section 251(b)(5).[228] As discussed above, in the *Local Competition First Report and Order*, the Commission interpreted the "additional cost" standard of section 252(d)(2) to permit the use of the TELRIC cost standard that was established for interconnection and unbundled elements.[229] In this section, we solicit comment on whether this standard is, or could be, satisfied by the various reform proposals. We also solicit comment on a number of alternatives for modifying or replacing the current TELRIC cost standard that could be considered in conjunction with certain of the proposals or as independent alternatives.

a. Comprehensive Proposals

65. Many of the proposals include a specified rate or pricing methodology for the termination of traffic subject to section 251(b)(5). We ask parties to address whether these proposals satisfy the statutory pricing standard in section 252(d)(2). Except for the CBICC proposal, which supports a TELRIC cost standard, each proposal would require some departure from the Commission's implementation of the section 252(d)(2) "additional cost" standard. The ICF addresses this question in

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[226] *See* 47 U.S.C. §§ 251(b)(5), 252(d)(2).

[227] *See* 47 U.S.C. § 254(g).

[228] Specifically, section 252(d)(2)(A) states that, for the purpose of incumbent LEC compliance with section 251(b)(5), a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless such terms and conditions: (i) provide for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier;" and (ii) "determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls." 47 U.S.C. §252(d)(2)(A).

[229] *Local Competition First Report and Order*, 11 FCC Rcd at 16023, para. 1054.

its *ex parte* brief filed in support of its proposal.[230] It contends that a unified bill-and-keep regime, such as that proposed by the ICF, is consistent with section 252(d)(2).[231] Similarly, ARIC maintains that its FACTS proposal would comply with the "additional cost" standard.[232] We ask parties supporting these proposals or others to comment on whether the specified rate or pricing methodology complies with these statutory provisions.

b. Limit recovery under existing rules

66. As noted above, the use of the TELRIC standard for reciprocal compensation has created some problems. If the Commission decides to retain the current TELRIC methodology for reciprocal compensation (*e.g.*, as part of the CBICC plan), we ask parties to address whether we should define more precisely what costs are traffic-sensitive, and thus recoverable through reciprocal compensation charges, and what costs are non-traffic-sensitive, and not recoverable through reciprocal compensation charges. As a first step in providing such guidance, we must be more specific about the meaning of the term "traffic-sensitive." If costs for a portion of the network vary with the number of customers on the network, would those costs be considered "traffic-sensitive"? Or must costs vary with usage of a particular customer to be "traffic-sensitive"?

67. We seek comment on what components of the wireline network should be considered traffic-sensitive. Should the Commission revisit its decision in the *Local Competition First Report and Order* that loop costs are not traffic-sensitive? Should we provide more detail as to which switching components, if any, are traffic-sensitive? In the Commission's pending TELRIC rulemaking,[233] a number of parties have argued that the substantial majority of switching costs do not vary with minutes of use (MOU) and that switching should be offered on a flat-rated basis rather than a per-minute basis.[234] These arguments are consistent with the decisions of a number of state commissions finding that end-office switching costs are not traffic-sensitive and therefore should be recovered on a flat, per-line basis, and not on a per-MOU basis.[235] We ask parties to comment on whether the Commission should reach a

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[230] *See* ICF Oct. 5 *Ex Parte* Letter, Attach. at 38-42 (filed Oct. 5, 2004) (attaching Ex Parte Brief of the Intercarrier Compensation Forum in Support of the Intercarrier Compensation and Universal Service Reform Plan) (ICF Supporting Brief).

[231] *See id.* Similarly, Western Wireless maintains that the Commission and the states may require bill-and-keep under section 252(d)(d) of the Act. Western Wireless Proposal at 10. *But see* ARIC Proposal at 18-19 (claiming that a mandatory bill-and-keep approach is not permitted under the Act).

[232] ARIC Proposal at 41.

[233] *See TELRIC NPRM*, 18 FCC Rcd at 18953, para. 18.

[234] MCI argues, for example, that vendor contracts for switches establish per-line prices, rather than per-minute prices, and thus LECs do not incur switching costs on a per-minute basis. MCI TELRIC Comments at 30. Similarly, AT&T argues that switches generally have substantial excess capacity so that increases in usage do not increase switching costs. AT&T TELRIC Comments at 73-76.

[235] *See Determination of the Cost of the Unbundled Loop of Qwest Corp.*, Docket No. 01-049-85, Report and Order (Utah PSC May 5, 2003); *Re Ameritech Indiana*, Cause No. 40611-51 (Ind. URC Mar. 28 2002); *Investigation into Ameritech Wisconsin's Unbundled Network Elements*, Docket 6720-TI-161, Final Decision (Wisc. PSC Mar. 22, 2002); *Commission Review and Investigation of Qwest's Unbundled Network Elements Prices*, Docket No. P-421/CI-01-1375, Order Setting Prices and Establishing Procedural Schedule (Minn. PUC Oct. 2, 2002);
(continued….)

similar result with respect to recovery of switching costs for purposes of reciprocal compensation.

68. We invite comment on the proposition that digital switching costs no longer vary with minutes of use due to increased processor capacity. Is this proposition correct for both end office switches and tandem switches? What about competitive LEC switches that have characteristics of both tandems and end offices? To what extent do any capacity constraints become obsolete as carriers migrate to Internet-protocol switching?[236] Parties taking the position that switching costs do vary with minutes of use should identify the specific portions of the switch for which costs increase when minutes of use increase. Similarly, those parties should explain how costs decrease as minutes on the switch decrease. We ask parties to provide objective evidence demonstrating that their switching costs have increased or decreased with MOU.

69. We also solicit comment on which components of a wireless network (*e.g.*, spectrum, cell sites, backhaul links, base station controllers, mobile switching centers) should be considered traffic-sensitive. Would the classification of switching costs on wireline networks as traffic-sensitive or non-traffic-sensitive apply equally to wireless networks? If we retain the rule limiting wireline LECs to recovery of traffic-sensitive switching costs, should we establish a similar limitation on the costs that wireless carriers may recover through reciprocal compensation charges? What are the competitive implications of a finding that wireless networks have more traffic-sensitive costs than wireline networks?[237] Should competitive neutrality play a role in this determination? Should we limit reciprocal compensation recovery to ensure that one type of network is not advantaged by a greater ability to shift costs to other carriers?

70. Once we identify the traffic-sensitive costs, we must determine whether they should be recovered on a per-minute or flat-rated capacity basis.[238] The Commission's UNE rules specify that rate structures reflect the manner in which the costs are incurred.[239] Our rules require that the costs of shared facilities be recovered in a manner that efficiently apportions them among users, either through usage-sensitive charges or capacity-based flat-rated charges.[240] We solicit comment on whether state

(Continued from previous page)
Investigation Into the Compliance of Illinois Bell Telephone Company with the Order in Docket No. 96-0486/0569 Consolidated, Docket No. 98-0396, Order (Ill. CC Oct. 16, 2001).

[236]For example, we note that Cisco Systems, Inc. has introduced a new router with so much capacity that it can transfer the entire collection of the U.S. Library of Congress in 4.6 seconds. *See* Charles Waltner, *A New Era for Communications Begins with CRS-1* (visited February 11, 2005) http://newsroom.cisco.com/dlls/2004/hd_052504c.html.

[237]*CMRS Termination Compensation Order*, 18 FCC Rcd at 18444-47, paras. 6-16.

[238]State public utility commissions, in applying the Commission's rules governing reciprocal compensation, have generally adopted average per-minute rates.

[239]47 C.F.R. § 51.507(a); *Local Competition First Report and Order*, 11 FCC Rcd at 15874, para. 743.

[240]47 C.F.R. § 51.507(c); *Local Competition First Report and Order*, 11 FCC Rcd at 15878, para. 755. The Commission's rate structure rule for the local switching UNE requires that costs for this element be recovered through a combination of a flat-rated charge for line ports and one or more flat-rated or per-MOU charges for the switching matrix and trunk ports, but it does not specify a particular combination or means for determining the appropriate combination. 47 C.F.R. § 51.509(b). *Local Competition First Report and Order*, 11 FCC Rcd at 15878, para. 757.

commissions should retain discretion to establish per-minute reciprocal compensation rates, or whether, in light of the harmful consequences of per-minute reciprocal compensation charges,[241] we should require flat-rated recovery of costs, regardless of whether they are traffic-sensitive. If the latter, we solicit comment on how to structure these charges. For example, is a port charge feasible? If so, would a port charge be related to capacity (*e.g.*, DS1 trunk port, DS3 trunk port)? Alternatively, would it be feasible for carriers to provide other carriers with "buckets" of minutes as wireless carriers offer their retail customers?

c. Replace current rules with an incremental cost standard

71. The statutory pricing standard for reciprocal compensation ("additional cost") is not the same as the statutory pricing standard for UNEs (cost plus a reasonable profit) set forth in the Act.[242] Although the Commission decided in the *Local Competition First Report and Order* that the TELRIC pricing methodology satisfied both standards,[243] our subsequent experience suggests that TELRIC is not necessarily consistent with the "additional cost" standard. Specifically, TELRIC measures the *average* cost of providing a function,[244] which is not necessarily the same as the *additional* cost of providing that function.

72. We solicit comment on whether a true incremental cost methodology is more appropriate for establishing "additional costs" under section 252(d)(2).[245] How should we determine what costs are "incremental"? How would we apply an incremental cost methodology to the various components of the network, either wireline or wireless? Is it clear that the incremental cost of loop plant is zero? With respect to switching costs, should we assume that carriers purchase digital switches that are equipped with the capacity to originate and terminate all of the traffic of a carrier's retail customers? If so, are there any switching costs that would be considered incremental? We ask parties to comment on whether the Commission should interpret the "additional cost" standard to be the difference between the long-run forward-looking total cost of a network and that of a network with the same number of subscribers in the same locations that differs only in that it was designed assuming each subscriber makes additional calls.

73. Alternatively, what are the merits of using short-run incremental costs when determining the "additional costs" incurred to terminate calls that originate on another carrier's network? Is there a difference between short-run incremental costs and traffic-sensitive costs? What are the merits of a long-run approach? Would the "additional" costs of terminating traffic under a long-run incremental cost methodology differ significantly from the average costs calculated under TELRIC? Once we identify the relevant incremental costs, how should they be recovered? Should we allow recovery through usage sensitive, per-minute charges, or non-traffic-sensitive, flat-rated (per-trunk port) charges?

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[241] *See supra* para. 23 n.67

[242] *Compare* 47 U.S.C. § 252(d)(2) *and* 47 U.S.C. § 252(d)(1).

[243] *See Local Competition First Report and Order*, 11 FCC Rcd at 15844-56, 16023, paras. 672-703, 1054.

[244] *See TELRIC NPRM*, 18 FCC Rcd at 18953, para. 18.

[245] We note that the term "additional cost" is found only in one other place in the Act. *See* 47 U.S.C. § 224(d)(1). In that context, the statutory language makes clear that this is an incremental cost standard. *Id.*

d. Forbear from section 251(b)(5) compensation requirement

74. We seek comment on whether the Commission could use its authority under section 10 of the Act to forbear from certain aspects of the compensation requirement of section 251(b)(5) as part of any intercarrier compensation reform effort.[246] Section 10 establishes a three-part test to determine whether forbearance is appropriate.[247] In the *Intercarrier Compensation NPRM*, the Commission sought comment on whether the imposition of a bill-and-keep regime would require that it forbear from section 252(d)(2)'s "additional cost" pricing standard and whether the prohibition on forbearance from section 271 makes imposition of bill-and-keep legally problematic.[248] Commenters differ as to whether the Commission can impose a bill-and-keep regime under section 252(d)(2), absent forbearance.[249] They also differ on whether the Commission could exercise its forbearance authority in order to impose a bill-and-keep regime.[250] In this section, we explore further whether our statutory forbearance authority permits us to consider proposed bill-and-keep regimes for traffic subject to section 251(b)(5), regardless of the appropriate construction of sections 251(b)(5) and 252(d)(2). We ask parties to comment on whether the forbearance criteria would be satisfied with respect to the section 251(b)(5) compensation requirement.

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[246]The Commission previously concluded in the *Local Competition First Report and Order* that bill-and-keep is a permissible reciprocal compensation arrangement provided that the traffic exchanged between interconnecting carriers is relatively balanced. *See Local Competition First Report and Order*, 11 FCC Rcd at 16054-55, paras. 111-12. In the *Intercarrier Compensation NPRM*, the Commission sought comment on whether the statute can be read to permit bill-and-keep for all traffic subject to section 251(b)(5), even if it is not balanced. *See Intercarrier Compensation NPRM*, 16 FCC Rcd at 9635-37, 9644-45, paras. 73-77, 97.

[247]Specifically, section 10(a) states that the Commission shall forbear from applying any regulation or provision of the Act to a telecommunications carrier or telecommunications service, or class of carriers or services, in any or some of its or their geographic markets, if it determines that (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. 47 U.S.C. § 160(a).

[248]*Intercarrier Compensation NPRM*, 16 FCC Rcd at 9637, para. 77. Section 10(d) states that, except as provided in section 251(f), the Commission may not forbear from applying the requirements of sections 251(c) or 271 until it determines that those requirements have been fully implemented. 47 U.S.C. § 160(d).

[249]*Compare* AT&T Reply at 29 (rejecting the notion that bill-and-keep provides for the mutual and reciprocal recovery of costs as required by section 252(d)(2) of the Act) *with* SBC Comments at 44 (arguing that bill-and-keep appears to satisfy section 252(d)(2) of the Act if there is an end user recovery mechanism).

[250]*Compare* AT&T Comments at 39-40 (arguing that the Commission cannot satisfy the forbearance criteria and that forbearance from certain sections of the Act is not possible until it finds that those requirements have been fully implemented) *and* Time Warner Comments at 27-30 (stating that the Commission appears to lack the authority to forbear from certain sections of the Act) *with* Sprint Comments at 21-22 (maintaining that the statutory criteria for forbearance may be satisfied). In addition, NASUCA states that the Commission cannot forbear from applying sections 251 and 252, but it provides no analysis or further explanation to support this position. NASUCA Comments at 29. *See also* Cable & Wireless Reply at 20-21; e.spire and KMC Telecom Reply at 11; Focal *et al.* Reply at 36-37; Taylor Communications Reply at 26.

75. We assume that, if any forbearance were needed to support a bill-and-keep regime, such forbearance would apply only with respect to the compensation requirement of section 251(b)(5) and not to the requirement to enter into reciprocal arrangements for the transport and termination of traffic. Under this approach, state commissions would continue to review interconnection agreements to determine if they meet the requirements of section 251(b)(5), but states no longer would consider, as part of that review, whether the rates for transport and termination of traffic are consistent with the pricing requirements of section 252(d)(2) and our rules. We ask parties to comment on this approach and to identify any new rules or requirements that would be needed to implement such an approach.

76. We seek comment on whether the bar to forbearance contained in section 10(d) precludes exercise of forbearance in this case.[251] On its face, section 10(d) precludes forbearance only until section 251(c) is implemented and is silent with respect to obligations imposed under section 251(b). We note, however, that the predecessor to the Wireline Competition Bureau previously held that section 251(b) obligations are incorporated by reference into section 251(c).[252] Was this holding correct and, if not, should the Commission take this opportunity to reverse it?

77. Assuming that we can forbear from imposing section 251(b) obligations, we solicit comment on whether the Commission also should forbear from enforcing the compensation requirement contained in section 271(c)(2)(B)(xiii). If we forbear from section 251(b)(5), is there any reason not to forbear from section 271(c)(2)(B)(xiii) as well?[253] We seek comment on whether forbearance from section 271(c)(2)(B)(xiii) satisfies the requirements of section 10(a).

2. State Jurisdiction and Joint Board Issues

78. As discussed above, the Commission has authority under section 201 to adopt or modify compensation mechanisms that apply to jurisdictionally interstate traffic and it clearly has authority to modify the pricing methodology that applies to reciprocal compensation under section 252(d)(2).[254] Because access charges for intrastate traffic historically have been an area within the exclusive jurisdiction of state commissions, however, any proposal that includes reform of intrastate mechanisms must address the Commission's legal authority to implement such reform.

[251] 47 U.S.C. § 160(d).

[252] *See Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Letter from Carol Mattey, Deputy Chief, Common Carrier Bureau, to Michael L. Shor, Swidler Berlin Shereff Friedman, 16 FCC Rcd 22, 23 (Comm. Car. Bur. 2000).

[253] Section 10(d) precludes forbearance from the requirements of section 271 until they have been fully implemented. Based on the Commission's previous determination that all of the BOCs have fully implemented section 271, *see* Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c), SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c), Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c), BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c), WC Docket Nos. 01-338, 03-235, 03-260, and 04-48, Memorandum Opinion and Order, FCC 04-254, paras. 12, 15 (rel. Oct. 27, 2004), section 10(d) does not bar the Commission from forbearing from the compensation requirement contained in section 271(c)(2)(B)(xiii) if forbearance otherwise meets the requirements of section 10.

[254] *See AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 385 (1999) (holding that the Commission has jurisdiction to design a pricing methodology to be applied under section 252(d) of the Act).

79. In the 1996 Act, Congress adopted section 251(b)(5) which, on its face, applies to all telecommunications. As noted above, however, Congress "carved out" access traffic from the scope of section 251(b)(5).[255] In the *Local Competition First Report and Order*, the Commission found that the section 251(g) carve-out includes intrastate access services.[256] Based on this statement in the *Local Competition First Report and Order* and the Commission's authority under section 251(g) to supersede that carve-out,[257] we ask parties to comment on whether the Commission has authority to replace intrastate access regulation with some alternative mechanism. If so, must the mechanism comply with the requirements of sections 251(b)(5) and 252(d)(2)?

80. We also seek comment on alternative legal theories under which the Commission could reform intrastate access charges. For example, under the "mixed use" doctrine, traffic is treated as jurisdictionally interstate if it is impossible or impractical to separate the interstate and intrastate components.[258] We ask parties to comment on whether this same analysis applies to other types of traffic, such as calls that originate or terminate with other types of VoIP service or on a CMRS network. With the advent of intermodal number portability, how, practically, can one be sure of a customer's physical location? Does the inability to determine the actual geographic end points of a call provide a basis on which to conclude that the intrastate component of certain types of traffic is not severable from the interstate component? If it becomes impossible or impractical to determine the end points of a substantial portion of traffic, would that justify a finding that all traffic should be treated as jurisdictionally interstate for purposes of intercarrier compensation? Do certain characteristics of IP-enabled services counsel interstate treatment for intercarrier compensation purposes, such as the inseverability of multiple features that can be accessed simultaneously, the irrelevance of geography to the provisioning and use of the service, or the lack of service-related reasons to incorporate geographic or jurisdictional tracking systems into the IP network?

81. We recognize that some of the industry proposals call for a cooperative process between the Commission and states, which may minimize concerns about this Commission's jurisdiction. For instance, the ARIC proposal calls for a joint process to establish unified compensation rates and both the ARIC and CBICC proposals would involve a Joint Board.[259] We solicit comment on whether the

[255] 47 U.S.C. § 251(g).

[256] *Local Competition First Report and Order*, 11 FCC Rcd at 15869, para. 732.

[257] 47 U.S.C. § 251(g). (providing for continued enforcement of exchange access and interconnection agreements "... until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after the date of such enactment.")

[258] *See MTS and WATS Market Structure, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, Decision and Order, 4 FCC Rcd 5660, n.7 (1989) (*MTS/WATS Market Structure Separations Order*) (the Commission found that "mixed use" special access lines carrying more than a de minimis amount of interstate traffic to private line systems are subject to the Commission's jurisdiction because traffic on many such lines could not be measured without "significant additional administrative efforts") *See also Petition For Declaratory Ruling That pulver.com's Free World Dialup Is Neither Telecommunications Nor A Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, 19 FCC Rcd 3307, at 16 (2004) (finding Pulver's Free World Dialup (FWD) service to be analogous to services subject to the "mixed use" doctrine).

[259] *See* ARIC Proposal at 37-38; CBICC Proposal at 2. The EPG plan would reduce intrastate access rates to interstate rate levels but does not explain how the Commission could require such reductions.

Commission should refer any of the issues related to intrastate access charges to a Federal-State Joint Board, as ARIC and CBICC suggest.[260] Under section 410(c) of the Act, the Commission is required to refer "any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations" to a Federal-State Joint Board.[261] In addition, that same statutory provision permits the Commission to refer "any other matter relating to common carrier communications of joint Federal-State concern."[262] Do any of the issues addressed in this Further Notice fall within the scope of the mandatory referral requirement of section 410(c)?

82. The ICF maintains that the Commission already has the authority to address intrastate access reform by virtue of sections 201, 251(b)(5), and 254 of the Act.[263] According to the ICF, section 201 gives the Commission authority to implement section 251(b)(5), which covers compensation for all telecommunications involving a LEC, including intrastate telecommunications.[264] In addition, the ICF argues that the Commission may assert preemptive authority over intrastate traffic under section 254.[265] It claims that the Commission "can and should preempt intrastate access charges on the ground that they are inconsistent with the Commission's duty under section 254 to rationalize universal service support."[266] We take our charge under section 254 seriously, but are also mindful of the states' historical authority over charges for intrastate services. Accordingly, we seek comment on the legal analysis presented by these proposals concerning the Commission's authority over intrastate access reform, and specifically whether the changes wrought by the 1996 Act give the Commission the power to assert authority over the intrastate charges at issue in this proceeding.

3. Rate Averaging and Integration Requirements

83. In section 254(g), Congress codified the Commission's pre-existing geographic rate averaging and rate integration policies.[267] The Commission implemented section 254(g) by adopting two requirements.[268] First, providers of interexchange telecommunications services are required to charge rates in rural and high-cost areas that are no higher than the rates they charge in urban areas.[269] This is

[260] *See* ARIC Proposal at 37-38, 56-57; CBICC Proposal at 2. *See also* NARUC Principles at 4 (suggesting that the Commission refer issues to the Joint Board in order to ensure state input). The ICF takes the position that its plan may be adopted without a joint board referral. *See* ICF Supporting Brief at 45 n.73.

[261] 47 U.S.C. § 410(c).

[262] *Id.*

[263] *See* ICF Supporting Brief at 28-38.

[264] *Id.* at 28-32.

[265] *Id.* at 35-38. Section 254 of the Act governs universal service support and Commission duties relating to universal service. *See* 47 U.S.C. § 254.

[266] ICF Supporting Brief at 35.

[267] *See Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Report and Order, 11 FCC Rcd 9564, 9566-67, paras. 3-5, 9568–69, para. 9 *(Geographic Rate Averaging Order)* (citing S. Rep. No. 230, 104th Cong., 2d Sess. 1) (1996)).

[268] *Id.* at 9565-66, para. 2.

[269] 47 C.F.R. § 64.1801; *see Geographic Rate Averaging Order,* 11 FCC Rcd at 9568-69, para. 9, 9574, para. 20.

known as the geographic rate averaging rule. Second, providers of interexchange telecommunications services are required to charge rates in each state that are no higher than those in any other state.[270] This is known as the rate integration rule.

84. In the *Geographic Rate Averaging Order*, the Commission explained that geographic rate averaging benefits rural areas by providing access to a nationwide telecommunications network at rates that do not reflect the disproportionate burdens that may be associated with recovery of common line costs in rural areas.[271] The Commission also noted that geographic rate averaging ensures that rural customers will share in lower prices resulting from nationwide interexchange competition.[272] Similarly, the Commission enunciated that its policy of integrating "offshore points" such as Hawaii and Alaska into the mainland's interstate interexchange rate structure brings the benefits of growing competition to the entire nation.[273]

85. Under the Commission's rate averaging and rate integration requirements, IXCs bear the burden of averaging on a nationwide basis the different per-minute switched access rates charged by LECs. This results in an implicit subsidy flowing from customers in low-cost areas served by IXCs to customers in high-cost service areas. The Commission historically has taken steps to facilitate IXC compliance with these requirements. For example, the averaging of the CCL charge in the NECA pool and the subsequent adoption of the LTS mechanism each reduced the access rate differentials that IXCs had to accommodate in their interstate long-distance rates.[274]

86. Absent some further reform of the access charge regime, we are concerned that the rate averaging and rate integration requirements eventually will have the effect of discouraging IXCs from serving rural areas. These requirements may place IXCs that serve rural areas at a competitive disadvantage to those that focus on serving urban areas. For instance, the BOCs offer long-distance services only within their regions and not to customers served by high-cost rural LECs. Nationwide IXCs such as AT&T, on the other hand, offer long-distance services in both urban and rural areas, including areas served by rural LECs. We are thus concerned that the competitive realities of the marketplace may drive increasing specialization of companies serving rural as opposed to non-rural areas, ultimately leading to higher costs and fewer competitive choices for rural consumers. We ask parties to comment on the relationship between the rate averaging and rate integration requirements and the access charge reform proposals described above. Do any of the proposals ease concerns about the disparate impact of rate averaging and rate integration requirements on nationwide IXCs? If not, are there additional steps the Commission should take to address these concerns? For example, are there circumstances where the Commission should forbear from the rate averaging and rate integration requirements? Or is section 254 amenable to an interpretation that would permit the Commission to treat

[270] 47 C.F.R. § 64.1801; *see Geographic Rate Averaging Order*, 11 FCC Rcd at 9588, para. 52.

[271] *Geographic Rate Averaging Order*, 11 FCC Rcd at 9567, para. 6.

[272] *Id.*

[273] *Id.* at 9588, para. 52.

[274] *See Access Charge Order*, 93 FCC 2d at 328, paras. 314-15; *MTS and WATS Market Structure Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 78-72, CC Docket No. 80-286, Report and Order, 2 FCC Rcd 2953, 2956 para. 24 (1987).

a portion of the high costs of interstate local switching and transport as universal service? Parties are asked to comment on the legality of such an interpretation and the desirability of taking such an approach.

E. Network Interconnection Issues

1. Background

87. Under section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point.[275] The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA.[276] In addition, our rules preclude a LEC from charging carriers for traffic that originates on the LEC's network.[277] For traffic subject to section 251(b)(5) of the Act, our rules permit a terminating carrier to recover from the originating carrier the cost of certain facilities from an "interconnection point" to the called party.[278] In the *Intercarrier Compensation NPRM*, the Commission solicited comment on whether an incumbent LEC should be obligated to bear its own costs of delivering traffic to a single POI when that POI is located outside the calling party's local calling area.[279] Alternatively, the Commission asked whether a carrier should be required to interconnect in every local calling area or pay the incumbent transport and/or access charges if the location of the single POI requires transport beyond the local calling area.[280] The Commission also sought comment on whether current rules result in inefficient network design by forcing the originating LEC to bear the cost of transport outside the local calling area, or whether requiring competitors to establish multiple POIs or pay for transport beyond the local calling area forces competitive carriers to replicate the incumbent LEC

[275] 47 U.S.C. § 251(c)(2)(B).

[276] *Application by SBC Communications Inc., Southwestern Bell Tel. Co. and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18390, para. 78 n.174 (2000).

[277] 47 C.F.R. § 51.703(b). At least two courts have held that this rule applies even in cases where an incumbent LEC delivers calls to a POI located outside its customer's local calling area. *See Southwestern Bell Tel. Co. v. Public Utils. Comm'n of Texas*, 348 F.3d 482, 486-87 (5th Cir. 2003); *MCImetro Access Transmission Services, Inc. v. BellSouth Telecommunications, Inc.*, 352 F.3d 872, 881 (4th Cir. 2003). Local calling areas are established or approved by state commissions. *Local Competition First Report and Order*, 11 FCC Rcd at 16013-14, para. 1035.

[278] Specifically, our rules permit recovery of the costs of transport and termination of telecommunications traffic between LECs and other telecommunications carriers. 47 C.F.R. § 51.701. The rules define "transport" as the "transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC." *Id.* § 51.701(c). The rules define "termination" as the "switching of telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises." *Id.* § 51.701(d).

[279] *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9651, para. 113.

[280] *Id.* The Commission also asked whether its regulations permit the imposition of access charges for calls that originate and terminate within one local calling area but cross local area boundaries due to the placement of the POI. *Id.*

network.[281]

88. In addition to these specific questions, the Commission sought comment on two working papers describing bill-and-keep approaches to intercarrier compensation and default interconnection rules that would apply when carriers cannot agree on the terms for interconnection.[282] Under the Central Office Bill and Keep (COBAK) approach, no carrier may recover any costs of its customers' local access facilities from interconnecting carriers, and the calling party's network is responsible for the cost of transporting the call to the end office serving the called party.[283] This approach would require the calling party's network to construct transport facilities to the called party's end office or purchase transport facilities or services from another carrier (including possibly the called party's network). Under the Bill Access to Subscribers – Interconnection Cost Split (BASICS) approach, networks would recover all intra-network costs from their end-user customers and divide equally the costs that result from interconnection.[284] The BASICS approach would require networks to distinguish between intra-network costs and the incremental costs of interconnection.[285]

89. In response to the *Intercarrier Compensation NPRM*, most competitive LECs and CMRS providers urge the Commission to maintain the single POI per LATA rule.[286] They argue that the current rule prevents incumbent LECs from imposing costly and burdensome interconnection requirements, thereby creating barriers to entry.[287] According to these commenters, a rule requiring competitors to interconnect in every local calling area or pay for transport to the POI outside the local calling area would essentially require new entrants to replicate the existing incumbent LEC network, regardless of whether it is efficient to do so.[288] Competitive LECs emphasize that they are willing to establish additional POIs when traffic levels warrant them,[289] and they contend that any additional transport costs

[281] *Id.* at 9652, para. 114.

[282] *See id.* at 9620-22, paras. 22-30.

[283] *Id.* at 9620-21, para. 23.

[284] *Id.* at 9621, para. 25.

[285] *Id.* at 9622, para. 28.

[286] *See, e.g.*, Cbeyond Comments at 9; Focal *et al.* Comments at 56; Global NAPs Comments at 7 n.11; Level 3 Comments at 28; PCIA Comments at 30; Sprint Comments at 29; Time Warner Comments at 15; WorldCom Comments at 81; AT&T Wireless Reply at 29; e.spire and KMC Reply at 14-15; Focal *et al.* Reply at 43; Level 3 Reply at 3; PCIA Reply at 11; Taylor Communications Reply at 34; VoiceStream Reply at 31-32; WebLink Wireless Reply at 17. Some CMRS providers maintain that they should not be required to maintain more than one POI per MTA. *See* CTIA Comments at 34; PCIA Comments at 30; Arch Wireless Reply at 7.

[287] *See* AT&T Comments at 57; Cablevision Lightpath Comments at 5; Time Warner Comments at 14; AT&T Reply at 36-37; AT&T Wireless Reply at 30.

[288] *See* Cablevision Lightpath Comments at 3; PCIA Comments at 31; AT&T Reply at 36; Focal *et al.* Reply at 43; Taylor Communications Reply at 36. *See also* Letter from Patrick H. Merrick, Director, Regulatory Affairs, AT&T, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 01-92, at 11 (filed May 1, 2002) (claiming that mirroring the incumbent LEC network is not economic for new entrants and will stifle competition) (AT&T May 1 *Ex Parte* Letter).

[289] *See* Allegiance Comments at 27; AT&T Comments at 59; Time Warner Comments at 14; WorldCom Comments at 22; AT&T Reply at 37; WorldCom Reply at 8; AT&T May 1 *Ex Parte* Letter at 12. They reason that additional (continued….)

are minimal in any event.[290]

90. As discussed in the *Intercarrier Compensation NPRM*, the incumbent LECs support a requirement that competitive carriers establish a POI in each local calling area or pay the transport costs to reach a POI outside the local calling area.[291] Incumbent LECs argue that, under the current rules, they bear a disproportionate amount of transport costs when a competitive LEC primarily terminates traffic and the recipient of the traffic is located near the competitive LEC's switch.[292] The competitive LECs and many CMRS providers oppose the idea of paying for transport and contend that the incumbent LEC should be required to deliver all traffic originating on its network to the selected POI at no charge.[293] Other commenters suggest that the interconnecting carrier selecting the POI be responsible for some portion of the transport costs to a POI located outside the local calling area, or that the interconnecting carrier establish additional POIs once certain criteria are met.[294] These commenters propose different criteria for establishing additional POIs, including specific traffic volume or distance thresholds.[295]

2. Discussion

91. The comments confirm that issues related to the location of the POI and the allocation of

(Continued from previous page)
POIs increase network reliability, and that network planners and engineers are in the best position to determine when additional POIs are warranted. *See* Allegiance Comments at 27-28.

[290] *See* PCIA Comments at 32.

[291] *See Intercarrier Compensation NPRM*, 16 FCC Rcd at 9651, para.112. *See also* MECA Comments at 44; SBC Comments at 18-19. *But see* Focal *et al.* Reply at 44-45 (pointing out that the incumbent LECs appear to support a single POI per LATA rule in the context of bill-and-keep). In addition, SBC argues that the single POI per LATA rule diminishes competitive LEC incentives to build their own networks. SBC Comments at 18. *But see* AT&T Reply at 37 (arguing that the existence of numerous POIs belies SBC's assertions).

[292] *See* Letter from Karen Brinkmann, Counsel to CenturyTel, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 96-98, 99-68, and 01-92, Attach. at 1-2 (filed Sept. 30, 2004); Letter from Donna Epps, Vice President, Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 99-68 and 01-92, at 2-3 (filed Dec. 16, 2004). *See also* Time Warner Reply at 28 (explaining that "free riding" can occur when a competitive LEC terminates more traffic than it originates and the recipient of the traffic is located near the competitive LEC's switch, thereby forcing the originating carrier to bear a disproportionate amount of transport costs).

[293] *See* Advanced Paging, *et al.* Reply at 5-6; AT&T Reply at 34; Cablevision Lightpath Reply at 8. *See also* AT&T May 1 *Ex Parte* Letter at 6. Indeed, some commenters maintain that the interconnection "at any technically feasible point" language in section 251(c)(2)(B) of the Act precludes the Commission from modifying this rule. *See, e.g.*, Allegiance Comments at 26-27; AT&T Comments at 56; AT&T Reply at 34; Taylor Communications Reply at 34-35. Thus, they maintain that each carrier should bear all transport costs on its side of the POI.

[294] *See* CenturyTel Comments at 31-32; Sprint Comments at 29-30; Texas Commission Comments at 11. AT&T Wireless, for instance, suggests that the carriers share (split) the transport costs because such an approach will encourage both parties to negotiate efficient POIs. *See* AT&T Wireless Reply at 29-30. *See also* Time Warner Reply at 29 (suggesting that the Commission establish a presumption that the current rules apply if the traffic originates and terminates in the same local calling area, and permit the states to address "outlier" situations).

[295] *See* Level 3 Comments at 29; Sprint Comments at 31 (suggesting a combined traffic volume and distance threshold); Texas Commission Comments at 12 (supporting a traffic volume threshold); Level 3 Reply at 24-25 (supporting a default traffic volume threshold). *See also* Time Warner Comments at 14 (stating that it agreed to establish additional POIs once traffic volumes reach a DS1 threshold).

transport costs are some of the most contentious issues in interconnection proceedings.[296] In particular, the record suggests that there are a substantial number of disputes related to how carriers should allocate interconnection costs, particularly when the physical POI is located outside the local calling area where the call originates or when carriers are indirectly interconnected. These disputes arise in part because of a lack of clarity among the various rules governing the costs of interconnection facilities and the relationship of those rules to the single POI rule.[297] In addition, our current rules may encourage traffic imbalances because terminating networks not only collect reciprocal compensation, they also avoid financial responsibility for transport facilities. When traffic is out of balance, the cost of interconnection is borne primarily by the originating carrier, and the terminating carrier may lack the incentive to minimize the transport costs associated with connecting the two networks.[298] For instance, competitive LECs appear to have targeted customers that primarily or solely receive traffic, such as ISPs, in order to become net recipients of traffic.[299]

92. In this Further Notice, we solicit additional comment on changes to our network interconnection rules to accompany proposed changes to the intercarrier compensation regimes. The record contains a number of different proposals concerning the responsibility for network interconnection costs. For example, BellSouth asks that we establish a default POI at the incumbent LEC's tandem office and hold each carrier responsible for transport costs on its side of the POI.[300] Qwest proposes a POI at the "edge" of the network, with each carrier responsible for costs on its side of the POI.[301] Qwest identifies specific locations for the "edge" of the network depending on the network and/or the type of interconnecting carrier.[302] Similarly, the ICF proposes a new approach to network interconnection based

[296] *See, e.g.*, Sprint Comments at 29 (urging the Commission to provide more definitive default rules concerning the obligations of carriers to establish POIs and the responsibility for transport costs); Level 3 Reply at 22-23 (asking the Commission to clarify its POI rules); PCIA Reply at 11 (stating that clarification of the interconnection rules is "long overdue"); Time Warner Reply at 28 (requesting that the Commission ensure that competitors are able to take advantage of the efficiencies of a single POI in a LATA without "free riding" on the incumbent LEC network).

[297] We note that there are petitions for declaratory ruling pending before the Commission that raise issues related to the responsibility for interconnection costs under our existing rules. *See Comment Sought on Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs*, CC Docket No. 01-92, Public Notice, 17 FCC Rcd 13859 (2002); *Pleading Cycle Established for Comments on @ Communications Petition for Declaratory Ruling*, CC Docket No. 02-4, Public Notice, 17 FCC Rcd 1010 (2002). We will clarify the application of our current rules when we address these petitions.

[298] *See* Sprint Comments at 29.

[299] *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9616, para. 11. In such situations, the originating carrier bears the cost of interconnection to the single POI selected by the competitive LEC in addition to paying reciprocal compensation for the termination of traffic. Because ISP customers rarely, if ever, originate traffic, there is little traffic flow in the opposite direction, and the originating carrier bears the majority of the interconnection costs between the two carriers.

[300] *See* Letter from W.W. Jordan, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at Attach. (filed June 14, 2002). Similarly, Verizon proposes default interconnection points at incumbent LEC tandem wire centers. *See* Verizon Reply at 13-18.

[301] *See* Letter from John W. Kure, Executive Director – Federal Policy and Law, Qwest Communications International, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at Attach. (filed Aug. 2, 2002).

[302] *Id.*

on carrier "Edges."[303] As discussed above, the ICF plan establishes default technical and financial rules that generally require an originating carrier to deliver traffic to the "Edge" of a terminating carrier's network.[304]

93. We ask parties to comment on the network interconnection proposals in the record and on the ICF's proposed default network interconnection rules.[305] Is the level of detail proposed by the ICF appropriate for inclusion in federal rules, or would it be better for the Commission to establish more general requirements that leave the details to be negotiated between the carriers? What are the costs and benefits of establishing different interconnection rules for hierarchical, non-hierarchical, and CRTC networks, as the ICF proposes? Is this approach philosophically consistent with the goal of a unified regime? Is this a sensible way to approach interconnection between different types of networks, or are there other factors we should consider?

94. We also seek comment on whether the Commission should consider different network interconnection rules for small incumbent LECs or rural LECs.[306] Would different network interconnection rules for small incumbent LECs or rural LECs serve the Commission's goals of promoting economic efficiency and facilities-based competition? Would a rule requiring competitors to pay for transport outside the local calling area to the POI essentially require new entrants to replicate the existing incumbent LEC network, regardless of whether it is efficient to do so? Further, is such an approach competitively and technologically neutral given the different network architectures of competitive networks, including wireless networks?

95. Other proposals, such as the ARIC, CBICC, and NASUCA proposals, do not address changes to the existing network interconnection rules. If we do not adopt the ICF proposal, we seek comment on whether to retain our existing network interconnection rules as part of our reform efforts or whether we should consider alternative methods of determining financial responsibility for network interconnection costs. Parties that support retention of the existing network interconnection rules should address the issues arising under the current rules (as described above) and also the impact of any particular compensation reform proposal on the existing network interconnection rules. Parties that do not support retention of our existing network interconnection rules should comment on alternative methods of determining financial responsibility for network interconnection costs.

96. We also solicit comment on whether changing our pricing methodology for reciprocal compensation, as proposed above, will have any effect on the incentives of competitive carriers, including CMRS providers, to establish multiple POIs. For example, if the Commission adopts a bill-and-keep approach and competitors pay the same rate (zero) to terminate calls wherever they connect to

[303] *See* ICF Proposal at 3-31. *See also supra* para. 40.

[304] *See* ICF Proposal at 4-9.

[305] In addition, we note that the default network interconnection rules proposed by Western Wireless appear to be based, in part, on the ICF's "Edge" approach. *See* Western Wireless Proposal at 12. For interconnection between hierarchal incumbent LECs and other carriers, the Western Wireless proposal permits interconnection at the carrier "edge" or under a shared transport arrangement at the option of the competitive carrier. *Id.*

[306] For example, under the EPG proposal, the incumbent LEC would not be responsible for delivering traffic or paying any costs to a POI located outside the incumbent LEC's contiguous service area or beyond the serving area boundary. EPG Proposal at 33.

the incumbent LEC network, will there be incentives to interconnect at more than one POI per LATA? If reducing reciprocal compensation rates also reduces the incentive to establish multiple POIs, is there a need for the Commission to establish ground rules to facilitate more efficient interconnection? Parties proposing to require competitive carriers to establish multiple POIs per LATA should explain clearly what standards they would apply and provide objective evidence demonstrating the reasonableness of their proposal.

97. Finally, we ask parties to address whether any additional rule changes are needed to harmonize the network interconnection rules that apply to section 251(b)(5) traffic with the rules that apply to access traffic. For example, if we adopt a unified rate that applies to all types of traffic but retain interconnection rules that vary by type of traffic, carriers still may have an incentive to classify traffic as one type or the other in order to reduce their share of the interconnection costs. Should different rules apply to interconnection facilities connecting an IXC POP and a LEC switch?

F. Cost Recovery Issues

1. Interstate Access Charges

a. Price Cap LECs

98. By any measure, interstate access charges imposed on IXCs by price cap carriers have declined significantly over the years. At the time the original access charge regime was adopted, the average interstate traffic-sensitive switching rate was 3.1 cents per minute and the average total access charge was 17.26 cents per minute.[307] Most recent figures show the average interstate traffic-sensitive rate to be 0.48 cents per minute and the average total access charge to be 1.44 cents per minute.[308] Notwithstanding these reductions, access charges continue to represent a significant revenue source for these carriers and a significant cost component for IXCs.[309]

99. Many of the reform proposals include mechanisms by which some carriers will be permitted to offset revenues previously recovered through interstate access charges.[310] Other proposals question the need to offset revenues and oppose proposals that include revenue guarantees or assumptions concerning revenue neutrality.[311] We solicit comment on whether these mechanisms, or something comparable, must be adopted if we reduce or eliminate the ability of LECs to impose interstate switched access charges on IXCs. What is the Commission's legal obligation to provide alternative cost recovery mechanisms? Would the elimination of interstate switched access charges be

[307] *Telephone Trends Report*, Table 1.2. These figures represent the average rates (weighted by minutes of use) for all LECs that file access tariffs subject to price-cap regulation and all LECs in the National Exchange Carrier Association (NECA) pool.

[308] *Id.*

[309] In 2003, BOC interstate access revenues for switching amounted to approximately $1.8 billion. Source: Automated Reporting Management Information System (ARMIS) Annual Summary Report (FCC Report 43-01), Table 1, Cost and Revenue (1996-2003).

[310] For instance, the ICF Proposal calls for increased SLCs and two new universal service recovery mechanisms. *See* ICF Proposal at 69-74.

[311] See NASUCA Proposal at 2; Western Wireless Proposal at 18. *See also* CTIA Principles at 1-2.

confiscatory in the absence of such mechanisms? Should carriers be required to demonstrate that they will be unable to recover their switching and transport costs from other sources before we establish such mechanisms? For instance, NASUCA states that the Commission "should not assume that preservation of the current levels of access revenues is justified without any explanation of the financial need of the carriers."[312]

100. If we conclude that alternative cost recovery mechanisms are needed, we solicit comment on the various proposals that have been submitted. The ICF proposal, for example, includes elaborate rules designed to ensure that any revenue reductions are offset by new revenue opportunities.[313] In considering the ICF and other proposals, we ask parties to address whether the Commission is legally obligated to make any transition to a new compensation regime revenue neutral for the affected carriers. Should we define revenue neutrality based on a carrier's actual earnings, the authorized rate of return of 11.25 percent, or some other measure?[314] Does this obligation extend only to incumbent LECs, or does it apply to other carriers as well? If revenue neutrality is not mandatory, what criteria should we use in calculating the revenue opportunity that should be provided to LECs? How should revenue received from other wholesale services be factored into this analysis? What about new revenue opportunities (or cost reductions) that might be expected to arise if there were no more access charges? We encourage price cap carriers, both individually and collectively, to provide data regarding the amount of revenue that would be lost if the Commission no longer permits the imposition of interstate access charges. We also encourage price cap companies to provide data regarding the cost reductions they would experience if they no longer had to pay to terminate calls on other carriers' networks.

101. Two of the proposals rely primarily on two mechanisms – subscriber charges and some form of universal service support – for offering price cap carriers the opportunity to recover costs previously recovered from IXCs through interstate switched access charges.[315] We ask parties to comment on whether the Commission should rely solely on end-user charges, or whether it also should rely on universal service support mechanisms (new or existing) to offset revenues no longer recovered through interstate access charges. If additional recovery is permitted through federal subscriber charges, how should such charges be implemented? Specifically, we question whether it is realistic to institute a regulated SLC for years to come, when market conditions may not allow carriers to charge such a SLC. Is there sufficient competition in the marketplace to allow us to eliminate the SLC cap and permit price cap LECs to charge end users whatever the market will bear?[316] Would such a finding preclude the need for any additional universal service funding for price cap carriers? If such an option is not feasible today, under what circumstances might it become feasible? We also solicit comment on the extent to which SLCs lead to inefficient charges by serving as a pricing umbrella for competitive LECs.

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[312]NASUCA Proposal at 2.

[313]*See* ICF Proposal at 51-54.

[314]*See Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 89-624, Order, 5 FCC Rcd 7507 (1990) (the Commission prescribes for the interstate access services of local exchange carriers an authorized, overall rate of return on investment of 11.25 percent). *See* 47 C.F.R. § 65.700.

[315]*See, e.g.*, CBICC Proposal at 2; ICF Proposal at 48.

[316]Under the ARIC proposal, the current SLC caps would continue, but would be redesigned to recover both non-traffic sensitive and traffic sensitive costs. ARIC Proposal at 68-69. Rural carriers would bill SLCs at the weighted average residential and business SLCs for the price cap carriers in each state. *Id.* at 68.

102. If a cap on federal subscriber charges is needed, we ask parties to comment on the level at which the cap should be set if the jurisdictionally interstate costs of providing switched access no longer are recovered from IXCs through access charges. For example, are the rate caps proposed by the ICF appropriate?[317] Parties advocating a cap on subscriber charges are encouraged to provide data regarding elasticity of demand for telephone service and the number of subscribers that would be expected to terminate service if the cost of subscribership increases. If there is evidence that increased subscription costs would cause users to terminate service, would it make sense to give carriers the option to offer calling plans targeted to low usage customers that would impose federal subscriber charges on a per-minute or per-call basis?[318]

103. We ask parties to discuss what type of findings the Commission must make before using additional universal service funding to offset lost access charge revenues. Must carriers demonstrate that they are unable to recover interstate-allocated costs in the absence of such funding? To the extent that the Commission provides additional universal service support, how should such an approach be implemented? Should additional funding be made available through existing universal service support mechanisms or is it necessary to create an entirely new mechanism? We note that some of the proposals include cost recovery through a combination of the existing universal service support mechanisms and new sources of support.[319]

104. Commenters should also address the competitive neutrality of any new proposed universal service mechanism with respect to competitive eligible telecommunications carriers. For example, some of the proposals appear to limit additional support to certain types of carriers.[320] Parties that favor additional or alternative universal service support funding should be explicit in proposing how much additional funding is needed for price cap LECs, how they calculate such amounts, and how such funding should be raised and distributed.

105. We solicit comment on alternative approaches that would give LECs the opportunity to recover costs previously recovered from IXCs through interstate access charges. Would some sort of flat-rated connection charge on IXCs, as proposed by EPG, be appropriate either as an end in itself, or as a transition to a regime that depends solely on subscriber charges and universal service support? Would it be feasible simply to allow IXCs to subscribe to a LEC's tariffed retail services, as we have done with ISPs under the ESP exemption? Parties that favor an approach based on flat-rated charges should be specific in identifying what costs should be recovered from IXCs, how these charges should be calculated, and the length of any transition period.

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[317] *See* ICF Proposal at 60-63.

[318] *See* Michael H. Riordan, *An Economist's Perspective on Universal Residential Telephone Service, in,* The Internet Upheaval: Raising Questions, Seeking Answers in Communications Policy, 309-30 (Ingo Vogelsang and Benjamin M. Compaine, eds. MIT Press, 2000).

[319] For instance, the EPG proposal appears to retain the existing universal service support, while including a new additional source of support via the "Access Restructure Charge." EPG Proposal at 22. Similarly, the ARIC proposal would retain existing federal universal service support and add a new SEF. ARIC Proposal at 71-88.

[320] *See, e.g.*, ICF Proposal at 73 (stating that the TNRM recovery mechanism is available only to a CETC that has lost access revenue); EPG Proposal at 22-23 (stating that the new ARC charge is available only to regulated carriers for usage of their local networks). *But see* Western Wireless Proposal at 15 (proposing new support that would be fully portable to all designated ETCs operating in a geographic area).